IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3213 OF 2004

Bhagawan Gopinath Shinde)..PETITIONER

Versus

M/s.Khar Gymkhana)..RESPONDENTS

Mr. S.N. Deshpande, for the Petitioner
Mr. Anees S. Kazi, for the Respondent.

CORAM: F.I. REBELLO J.
DATE : 10th December, 2004

P.C.:

. The petitioner was charge sheeted in respect of two different charges. Enquiries were held and the charges against the petitioner for misconduct were held proved in respect of both the charge sheets. The petitioner was dismissed from service. He filed a complaint which came to be disposed of by order dated 6th April, 2000. The Labour Court did not interfere with the findings recorded, but found that the punishment imposed was disproportionate to the misconduct alleged and proved and consequently partly allowed the complaint and directed the management to reinstate the complainant in employment with continuity of service, but without back wages. The management aggrieved preferred a Revision Application. It was the contention that the Labour Court did not take into consideration all the charges which were proved against the workman. The Labour Court noted that the misconduct proved against the workman was unauthorised absenteeism, late attendance of duties and indulgence into act subversive of discipline. The Industrial Court thereafter

considered the finding of the Labour Court that the punishment amounted to legal victimisation. The Industrial Court also considered its jurisdiction under Section 44, however, held that the order passed by the Labour Court was unsustainable considering the nature of the charges and, therefore, found that the order of dismissal imposed by the management ought not to be interfered with.

2. It is this order which is the subject matter of the present petition. The order of the Industrial Court is 18th April,2002. The petition is filed only on 29th November, 2004 i.e. nearly after two and half years. In paragraph 3 of the petition the petitioner sought to explain the laches. A perusal of the impugned order will show that the petitioner was represented both before the Industrial and Labour Court by Lawyer. Therefore, his contention he could not be represented before this Court by Lawyer really cannot be accepted. Apart from that the services of the petitioner were terminated in the year 1997. The management also has to conduct its affairs. The explanation, therefore, offered for the laches is really not acceptable and on this count itself the petition is liable to be rejected.

3. Even otherwise in so far as the merits are concerned, I do not find that the impugned order of the Industrial Court suffers from any error apparent on the face of the record. Considering the charges and the fact that even during the pendency of the proceedings the petitioner was found absent on

occasions by itself would indicate that the action of the respondent in terminating the services of the petitioner cannot be said to amount to an act of legal victimisation. I find no cause for interference. Petition rejected.

(F.I.REBELLO, J.)